

**LAND AUTHORITY GOVERNING BOARD
AGENDA ITEM SUMMARY**

Meeting Date: September 20, 2006

Division: Land Authority

Bulk Item: Yes ☐ No ☒

Staff Contact Person: Mark Rosch

Agenda Item Wording: Approval of an extension to the contract for professional services with Larry R. Erskine, Esq.

Item Background: Mr. Erskine has served as legal counsel and provided real estate closing services for the Land Authority since 1987 via a series of contracts with his current and prior law firms. His current contract with the Land Authority expires October 19, 2006.

Advisory Committee Action: N/A

Previous Governing Board Action: The Board has approved 3-year contracts for Mr. Erskine's legal services since 1987. The most recent action was a June 15, 2005 amendment.

Contract/Agreement Changes: The proposed amendment extends the contract term for 3 years through October 19, 2009. There are no other changes.

Staff Recommendation: Approval

Total Cost: up to \$35,000/yr + closing fees

Budgeted: Yes ☒ No ☐.

Cost to Land Authority: up to \$35,000/yr + closing fees **Source of Funds:** Land Authority
(Tourist Impact Tax and State Park Surcharge)

Approved By: Attorney ☒ County Land Steward ☐.

Documentation: Included: ☒ To Follow: ☐ Not Required: ☐.

Disposition: _____ Agenda Item _____

SECOND AMENDMENT TO PROFESSIONAL SERVICES CONTRACT

THIS AMENDMENT to the Professional Services Contract is entered into this ____ day of September 2006, by and between the MONROE COUNTY COMPREHENSIVE PLAN LAND AUTHORITY, a land authority pursuant to s. 380.0661, Florida Statutes and Monroe County Ordinance 31-1986 (hereinafter "AUTHORITY"), whose address is 1200 Truman Avenue, Suite 207, Key West, FL 33040, and Larry R. Erskine, Esq. (hereinafter "FIRM"), whose address is PO Box 4035, Key West, FL 33041.

WITNESSETH:

WHEREAS, the AUTHORITY and FIRM entered into a Professional Services Contract (hereinafter "Contract") on October 15, 2003; and

WHEREAS, the Contract was modified by the First Amendment approved by the parties on June 15, 2005; and

WHEREAS, the parties desire to extend the term of the Contract;

NOW, THEREFORE, in consideration of the mutual promises contained in the Contract, the parties agree as follows:

1. The term of the Contract is hereby extended to include the period from October 20, 2006 through October 19, 2009.
2. In all other regards the Professional Services Contract shall remain in full force and effect.

Attest:

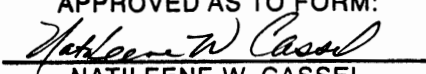
MONROE COUNTY COMPREHENSIVE PLAN
LAND AUTHORITY

By: _____
Mark J. Rosch, Executive Director

By: _____
Charles "Sonny" McCoy, Vice Chairman

LARRY R. ERSKINE, ESQ.

By: _____
Larry R. Erskine, Esquire

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

NATILEENE W. CASSEL
ASSISTANT COUNTY ATTORNEY
Date 9-5-06

FIRST AMENDMENT TO PROFESSIONAL SERVICES CONTRACT

THIS AMENDMENT shall revise the Professional Services Contract dated October 15, 2003, by and between the MONROE COUNTY COMPREHENSIVE PLAN LAND AUTHORITY, a land authority pursuant to s. 380.0661, Florida Statutes and Monroe County Ordinance 31-1986 (hereinafter "AUTHORITY"), whose address is 1200 Truman Avenue, Suite 207, Key West, FL 33040, and Larry R. Erskine, Esq. (hereinafter "FIRM"), whose address is PO Box 4035, Key West, FL 33041.

WITNESSETH:

WHEREAS, the AUTHORITY and FIRM entered into a Professional Services Contract on the date set forth hereinabove and wish to amend the terms of said Contract;

NOW, THEREFORE, in consideration of the mutual promises contained in this Contract, the parties agree as follows:

1. Paragraph "3A." of the Professional Services Contract is hereby deleted in its entirety and the following is substituted:

"A. For all of the above services, except closings, litigation, and bond related services, a fee of two hundred twenty-five dollars (\$225.00) per hour shall be paid by the AUTHORITY to the FIRM. Expenses shall be billed monthly as accumulated. Bond work is covered by Paragraph 1B above, and litigation by Paragraph 1C above. The AUTHORITY shall pay the FIRM an amount not to exceed \$35,000 per year for services under this contract, excluding closing fees and related charges set forth in Paragraph 3B, below."

2. This Amendment shall be effective as of May 27, 2005.

3. In all other regards the Professional Services Contract shall remain in full force and effect.



By: _____

Mark J. Rosch, Executive Director

MONROE COUNTY COMPREHENSIVE PLAN
LAND AUTHORITY

By: _____

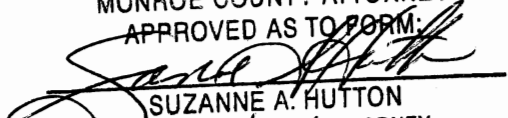
David P. Rice, Chairman

LARRY R. ERSKINE, ESQ.

By: _____

Larry R. Erskine, Esquire

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:


SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date: 5/31/05

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is made and entered into this 15th day of October, 2003, by and between the MONROE COUNTY COMPREHENSIVE PLAN LAND AUTHORITY (hereinafter "AUTHORITY"), 1200 Truman Avenue, Suite 207, Key West, FL 33040, and Larry R. Erskine, Esq. (hereinafter "FIRM"), 31211 Avenue A, Big Pine Key, FL 33043.

WITNESSETH:

WHEREAS, the AUTHORITY has previously contracted with FIRM to provide legal counsel for over ten years; and

WHEREAS, the AUTHORITY desires to enter into a new contract with FIRM for another term; and

WHEREAS, the FIRM is willing to continue to represent the AUTHORITY;

NOW, THEREFORE, in consideration of the mutual promises contained in this contract the parties agree as follows:

1. SCOPE OF SERVICES.

A. FIRM shall provide the following services:

- i) Legal opinions and general counseling to the AUTHORITY, its Executive Director, and its Advisory Committee;
- ii) Drafting and review of rules and other documents as requested by the Executive Director of the Land Authority;
- iii) Attendance at each scheduled meeting of the AUTHORITY and its Advisory Committee;
- iv) The FIRM will handle the closings on all properties acquired and sold by the AUTHORITY.

B. BOND ISSUES. If the AUTHORITY elects to issue bonds, the FIRM, at the discretion of the AUTHORITY, may act as counsel and if so shall be paid in the general manner and amount customary to the industry.

C. LITIGATION It is not anticipated that litigation will be necessary. Should the need arise, the FIRM shall handle the litigation at its customary hourly rate to the extent directed by the AUTHORITY.

D. LOBBYING - The duties of the FIRM specifically do not include lobbying before the Legislature of the State of Florida.

E. OFFICE SPACE - The AUTHORITY shall provide suitable office space, utilities, telephone service, custodial service, postage, office supplies, photocopy equipment,

furniture, and office equipment as necessary for the FIRM's work pursuant to this contract.

2. TERM. The term of this agreement is October 20, 2003, through October 19, 2006.

3. PAYMENT.

- A. For all of the above services, except closings, litigation, and bond related services, a fee of two hundred twenty-five dollars (\$225.00) per hour shall be paid by the AUTHORITY to the FIRM. Expenses shall be billed monthly as accumulated. Bond work is covered by Paragraph 1B above, and litigation by Paragraph 1D above. The AUTHORITY shall pay the FIRM an amount not to exceed \$17,500 per year for services under this contract, excluding closing fees and related charges set forth in Paragraph 3B, below.
- B. Closing fees for each transaction shall be five hundred dollars (\$500.00) plus the cost for an owners' title insurance policy at the promulgated rates shown in Attachment A. These fees shall be collected at and as a cost of closing.
- C. No travel expenses shall be paid for routine travel to and from the sites of the hearings and normal office supplies consumed in the course of representation will not be reimbursable.
- D. The FIRM shall submit all bills to the AUTHORITY'S Executive Director, or his designee, for review by the tenth of each month for services performed during the previous month. The bill shall be in a form satisfactory to the AUTHORITY'S Executive Director. Payment of approved bills shall be made to the FIRM within the time required by the Florida Prompt Payment Act.

4. TERMINATION.

- A. The FIRM serves at the pleasure of the AUTHORITY. The AUTHORITY may terminate this contract by providing the FIRM with written notice of termination. Upon receipt of the notice or upon any later effective termination date described in the notice, the FIRM shall immediately cease performing any further services under this contract. The AUTHORITY will remain obligated to pay the FIRM for all service performed but unpaid up to the date of the FIRM'S receipt of the notice or such later effective date specified by the AUTHORITY, provided that compensation for services shall not be terminated sooner than thirty (30) days after the date of written notice unless mutually agreed to, in writing, between the parties.
- B. The FIRM may terminate this contract by giving the AUTHORITY at least thirty (30) days written notice. The FIRM shall be paid for all services performed but unpaid up to the effective date of termination.

5. STANDARDS AND CORRECTIONS

- A. The FIRM shall perform or furnish professional services in accordance with the generally accepted standards of the FIRM's profession or occupation and with any laws, statutes, ordinances, codes, rules and regulations governing the FIRM's services hereunder.
- B. The FIRM shall, without additional compensation, correct and revise any errors, omissions, or other deficiencies in the FIRM's work product, services, or materials arising from the negligent act, error or omission of the FIRM. The foregoing shall be construed as an independent duty to correct rather than waiver of the AUTHORITY's rights under any applicable statute of limitations. The review of, approval of, or payment for any of the FIRM's work product, services, or materials shall not be construed to operate as a waiver of any of the AUTHORITY's rights under this Agreement, or cause of action the AUTHORITY may have arising out of the performance of this Agreement.

6. CONFLICTS OF INTEREST

- A. The FIRM will not represent parties before the AUTHORITY, the Monroe County Commission, or their staff in any matters related to the Land Authority during the term of this contract. However, the FIRM shall be permitted to represent clients before the Monroe County Commission and its staff in matters unrelated to the Land Authority.
- B. The FIRM shall notify the Executive Director of the AUTHORITY of any conflict of interest, which would preclude FIRM from representing AUTHORITY. Further, the FIRM shall notify the Executive Director of the AUTHORITY should the FIRM determine that additional counsel needs to be retained to assist the FIRM in its representation of the AUTHORITY.
- C. During any hours the FIRM provides services to AUTHORITY, the FIRM shall devote its full time and effort to the services being performed for the AUTHORITY. The FIRM shall truthfully and accurately maintain all records and make such reports as the AUTHORITY may require.

7. INSURANCE. Recognizing that the work governed by this contract involves the furnishing of advice or services of a professional nature, the FIRM shall purchase and maintain, throughout the life of the contract, Professional Liability Insurance which will respond to damages resulting from any claim arising out of the performance of professional services or any error or omission of the Contractor arising out of work governed by this contract.

The minimum limits of liability shall be:

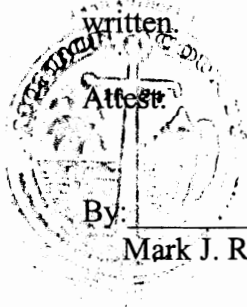
\$500,000 per Occurrence/\$1,000,000 Aggregate.

written consent of the AUTHORITY. Further, with the exception of title searches, no portion of this Agreement may be performed by subcontractors or sub-consultants without written notice to and approval of such action by the AUTHORITY.

9. ANTI-SOLICITATION. The FIRM warrants that it has not employed, retained or otherwise had act on its behalf any former County officer or employee subject to the prohibition of Section 2 of Ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision the AUTHORITY may, in its discretion, terminate this contract without liability and may also, in its discretion, deduct from the contract or purchase price, to otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former County officer or employee.
10. DELIVERY. All written notices required under this contract shall be considered to have been delivered and received if hand delivered or sent by certified U.S. Mail or a nationally recognized courier service to the addresses first written above.
11. VENUE, GOVERNING LAW, AND ATTORNEYS FEES. Venue for any litigation arising out of or under this agreement shall be in Monroe County, Florida. The governing law shall be that of the State of Florida. In the event of litigation to enforce payment or any of the terms of the agreement, the prevailing party shall be entitled to receive reasonable attorneys' fees, including appellate attorney fees, if necessary.
12. PUBLIC ENTITY CRIME STATEMENT. A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in Section 280.017 FS, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

13. SEVERABILITY/NO WAIVERS. In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition or covenant shall not be construed by the other party as a waiver of any subsequent breach.

IN WITNESS WHEREOF, the parties hereto have set their signatures the date first above



By: M. J. Rosch
Mark J. Rosch, Executive Director

MONROE COUNTY LAND AUTHORITY

By: Murray E. Nelson
Murray E. Nelson, Chairman

LARRY R. ERSKINE

By: [Signature]
Larry R. Erskine, Esquire

MONROE COUNTY ATTORNEY

APPROVED AS TO FORM

By: Suzanne A. Hutton
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY

Date

9/29/03

LAND AUTHORITY RATE SHEET

Effective: October 20, 2003

PROMULGATED RATES FOR TITLE INSURANCE

POLICY AMOUNT	PREMIUM	POLICY AMOUNT	PREMIUM
\$17,000	\$100.00	\$41,000	\$235.75
\$18,000	\$103.50	\$42,000	\$241.50
\$19,000	\$109.25	\$43,000	\$247.25
\$20,000	\$115.00	\$44,000	\$253.00
\$21,000	\$120.75	\$45,000	\$258.75
\$22,000	\$126.50	\$46,000	\$264.50
\$23,000	\$132.25	\$47,000	\$270.25
\$24,000	\$138.00	\$48,000	\$276.00
\$25,000	\$143.75	\$49,000	\$281.75
\$26,000	\$149.50	\$50,000	\$287.50
\$27,000	\$155.25	\$60,000	\$345.00
\$28,000	\$161.00	\$70,000	\$402.50
\$29,000	\$166.75	\$80,000	\$460.00
\$30,000	\$172.50	\$90,000	\$517.50
\$31,000	\$178.25	\$100,000	\$575.00
\$32,000	\$184.00		
\$33,000	\$189.75		
\$34,000	\$195.50		
\$35,000	\$201.25		
\$36,000	\$207.00		
\$37,000	\$212.75		
\$38,000	\$218.50		
\$39,000	\$224.25		
\$40,000	\$230.00		

PLUS THE FOLLOWING FEES:

TITLE SEARCH AND TITLE EXAMINATION FEE	\$125.00
ATTORNEY FEE	\$500.00

FOR CLOSINGS BETWEEN \$100,000 AND \$1,000,000, TITLE INSURANCE PREMIUMS ARE BASED ON \$5.00 PER \$1,000.